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No.

IN THE

Supreme Court of the United States

October Term, 1983

JAMES D. BACHTEL AND DONNA BACHTEL,
Petitioners,

v.

MAMMOTH BULK CARRIERS, LTD.,
Respondents,

v.

TWIN HARBOR STEVEDORING COMPANY,
Intervenor.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF PETITIONERS

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QUESTIONS PRESENTED

1. Did the Ninth Circuit Court of Appeals follow this Court's order to reconsider this case in light of *Scindia Navigation Co., Ltd. v. de Los Santos*, 451 U.S. 156 (1981)?

2. Under *Scindia*, was a stevedore's failure to rig safety nets so obviously improvident as to render the shipowner liable for negligence in failing to intervene?

3. Under *Scindia*, is the degree of danger that requires a shipowner to take remedial action a jury question?

4. Did the ship's design and crew's participation in the operation trigger a duty to exercise due care under *Scindia*?

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The first opinion of the United States Court of Appeals for the Ninth Circuit is reported as *Bachtel v. Mammoth Bulk Carriers, Ltd.*, 605 F.2d 438 (9th Cir. 1979). On Petition for Writ of Certiorari, the United States Supreme Court vacated the judgment and remanded the case to the Court of Appeals. The opinion is reported as *Mammoth Bulk Carriers, Ltd. v. Bachtel*, 451 U.S. 978 (1981). This Court also granted the Petition for Writ of Certiorari by the plaintiff's employer, Twin Harbor Stevedoring Co., intervenor, and vacated the judgment and remanded the case to the Court of Appeals. *Twin Harbor Stevedoring Co. v. James D. Bachtel*, 451 U.S. 978. On remand, the United States Court of Appeals for the Ninth Circuit entered an order, dated June 29, 1981, which is set forth in Appendix A. The final opinion of the Ninth Circuit Court of Appeals, dated October 24, 1983, is not reported but is set forth in Appendix B. The order of the Court of Appeals for the Ninth Circuit, denying the Petition for Rehearing, is not reported, but is set forth in Appendix C. In its unreported opinion, the court refers to and cites as controlling its decision in *Bandeen v. United Carriers (Panama), Inc.*, 712 F.2d 1336 (9th Cir. 1983).

JURISDICTION

On October 24, 1983, the United States Court of Appeals for the Ninth Circuit reversed the judgment entered in the United States District Court for the Western District of Washington. A petition for rehearing was timely filed and was denied on February 7, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves interpretation of the Longshoremen's and Harbor Workers' Compensation Act, as amended in 1972, 33 U.S.C. § 905(b):

> In the event of injury to a person covered under this chapter caused by the negligence of the vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of § 933 of this Title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed by the vessel to provide shipbuilding or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing shipbuilding or repair services to the vessel. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all of the remedies against the vessel except remedies available under this chapter.

STATEMENT OF THE CASE

This is an action by a longshoreman, James Bachtel,[1] for damages for devastating personal injuries, and by his wife, Donna Bachtel, for loss of society against Mammoth Bulk Carriers, Ltd., owner of the MAMMOTH FIR. Plaintiffs' claims are predicated on negligence. The right to sue the shipowner arises under 33 U.S.C. § 905(b). Twin Harbor Stevedoring Company, the employer of the plaintiff at the time of his injury, intervened to protect its interest in any third party recovery. The issues between plaintiff and his employer have been resolved.

On June 24, 1975, the plaintiff was employed as a longshoreman by Twin Harbor Stevedoring Company on board the MAMMOTH FIR, a bulk log carrier, moored starboard side to the dock at Aberdeen, Washington. The vessel

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1. Mr. Bachtel died on December 27, 1982. A personal representative has not been appointed. The Ninth Circuit was so advised at oral argument. The appeal proceeded pursuant to Fed. R. App. Proc. 43.

was fully loaded and the lashing of the deckload was the only work remaining. The ship's crew assisted the longshoremen in the lashing operation. The deckload of logs was contained within steel stanchions along both sides of the vessel. The stanchions rose to 20 feet from the deck and the logs were stowed to within two feet of the top of the stanchions. The stanchions contained no padeyes or method by which safety nets or lines could be rigged. The load was crested in the center of the ship to a height approaching 30 feet from the deck. The deckload was secured with wire cable ropes and heavy chains. Each wire rope and chain was shackled at the lower end to a padeye on the deck. The wire ropes were laid over the top of the logs from both sides of the vessel, at intervals of about 6 feet, in a lacing fashion at the crest of the load. The chains were lifted by a winch from both sides of the vessel and laid athwartship across the crest of the load. Longshoremen, with the assistance of the vessel's crew members, straightened the chains as needed. Each chain was to be secured to its opposing chain by a turnbuckle. James Bachtel was pulling on a chain on top of the deckload on the starboard side when he fell head first, 30 feet to the dock below. James Bachtel suffered multiple head and orthopedic injuries as a result of his fall to the dock.

The MAMMOTH FIR was designed as a bulk log carrier. The lashing system was dictated by the design of the vessel and its operational needs. The lashing method required men to work at the edge of a 20-30 foot dropoff. Notwithstanding the obvious danger created by the lashing system, the MAMMOTH FIR was not equipped with any safety nets or lines, and there was no method or equipment available to permit safety nets or lines to be rigged by the stevedore. The vessel owner knew that the stevedore could not or would not rig any safety devices to protect longshoremen from falling. The logs were slippery and the bark peeled off easily. The ship's own crew participated in the lashing and worked side by side with the plaintiff. (See *Bachtel v. Mammouth Bulk Carrier Ltd.*, 605 F.2d 438, 440 (9th Cir. 1979).)

Plaintiffs commenced this action on June 24, 1975, in the United States District Court for the Western District of

Washington on the basis of diversity jurisdiction. The first trial on May 9, 1977 resulted in a jury verdict and judgment for the plaintiffs in the sum of $266,331.00. The judgment was affirmed on appeal to the Ninth Circuit Court of Appeals.[2] On Petition for Writ of Certiorari, the United States Supreme Court vacated the judgment of the Ninth Circuit Court of Appeals and remanded the case for further consideration in light of *Scindia Steam Navigation Co. v. de Los Santos*, 451 U.S. 156 (1981).[3] The Ninth Circuit then set aside the District Court's judgment, concluded that "a new trial [was] necessary" and remanded the case to the District Court. (See Appendix A.) The case was tried a second time beginning March 1, 1982 in the United States District Court for the Western District of Washington and again resulted in a verdict and judgment in favor of the plaintiffs in the sum of $720,000.00. Mammoth Bulk Carriers, Ltd. again appealed to the Ninth Circuit Court of Appeals and, in a decision filed October 24, 1983, the case was reversed. The Court of Appeals denied the plaintiff's petition for rehearing on February 7, 1984 and indicated that this case was controlled by its decision in *Bandeen v. United Carriers (Panama)*, 712 F.2d 1341 (9th Cir. 1983), in which the court stated "in light of the legislative history of the 1972 amendments, we are satisfied that the ship had neither the duty to rig the lines, nor the duty to intervene in the stevedore's decision not to do so." (See Appendix B.)

REASONS FOR GRANTING THE WRIT

The writ of certiorari should be granted because the Ninth Circuit Court of Appeals has (1) failed to follow this Court's order to further consider this case in light of *Scindia*; (2) rendered a decision in conflict with the decision of another circuit and the applicable decisions of this Court; and (3) decided an important question of federal law which should be settled by this Court.

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2. *Bachtel v. Mammoth Bulk Carriers, Ltd.*, 605 F.2d 438 (9th Cir. 1979).
3. *Mammoth Bulk Carriers, Ltd. v. Bachtel*, 451 U.S. 978 (1981).

THE NINTH CIRCUIT HAS FAILED TO CONSIDER THIS CASE IN LIGHT OF THE PRINCIPLES SET FORTH IN *SCINDIA*

1. This case is controlled by 33 U.S.C. §905(b) and this Court's decision in *Scindia*.

In 1972, Congress made major reforms in the Longshoremen's and Harbor Worker's Compensation Act. Under 33 U.S.C. §905(b), unseaworthiness as a ground for recovery was eliminated, while recovery for negligence to longshoremen was permitted. However, §905(b) failed to define the parameters of the negligence standard. This Court addressed the issue in *Scindia Steam Navigation Co. v. de Los Santos*, 451 U.S. 156 (1981), and established broad principles for the determination of shipowner negligence. These principles are illustrated by the following quotes:

> We held in *Marine Terminals v. Burnside Shipping Co.*, 394 U.S. 404, 415, 89 S.Ct. 1144, 1150, 22 L.Ed.2d 371 (1969), that the vessel owes to the stevedore and his longshoremen employees the duty of exercising due care "under the circumstances." This duty extends at least to exercising ordinary care under the circumstances to have the ship and its equipment in such condition that an expert and experienced stevedore will be able by the exercise of reasonable care to carry on its cargo operations with reasonable safety to persons and property, and to warning the stevedore of any hazards on the ship or with respect to its equipment that are known to the vessel or should be known to it in the exercise of reasonable care, that would likely be encountered by the stevedore in the course of his cargo operations and that are not known by the stevedore and would not be obvious to or anticipated by him if reasonably competent in the performance of his work.

Id. at 166-167.

* * *

> . . . It is also accepted that the *vessel may be liable if it actively involves itself in the cargo operations and negligently injures a longshoreman or if it fails to exercise due care to avoid exposing longshoremen to harm from hazards they may encounter in areas or from equipment under the active control of the vessel during the stevedoring operation.*

Id. at 156, 157. (Emphasis supplied.)

* * *

> We are of the view that absent contract provision, positive law, or custom to the contrary . . . the shipowner has no general duty by way of supervision or inspection to exercise reasonable care to discover dangerous conditions that develop within the confines of the cargo operations that are assigned to the stevedore. The necessary consequence is that the shipowner is not liable to the longshoremen for injuries caused by dangers unknown to the owner and about which he had no duty to inform himself. This conclusion is plainly consistent with the congressional intent to foreclose the faultless liability of the shipowner based on a theory of unseaworthiness or nondelegable duty. The shipowner, within limits, is entitled to rely on the stevedore, and owes no duty to the longshoremen to inspect or supervise the cargo operations.

Id. at 172.

* * *

> Yet is quite possible, it seems to us, that Seattle's judgment in this respect was so *obviously improvident that Scindia, if it knew of the defect and that Seattle was continuing to use it, should have realized the winch presented an unreasonable risk of harm to the longshoremen, and that in such circumstances it had a duty to intervene and repair the ship's winch. The same would be true if the defect existed from the outset and Scindia must be deemed to have been aware of this condition.*

Id. at 175-76. (Emphasis supplied.)

Certiorari was previously granted in this case. The United States Supreme Court vacated the judgment of the Ninth Circuit Court of Appeals and remanded the case "for further consideration in light of *Scindia*." *Mammoth Bulk Carriers, Ltd. v. Bachtel*, 451 U.S. 978 (1981). At that time, the Ninth Circuit was given an opportunity to review the record and examine the principles of *Scindia*. It then determined that a new trial was necessary. Significantly, it did not hold that the record contained insufficient evidence of defendant's negligence.[4] It also did not hold that defendant's motion for

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4. In the initial Ninth Circuit opinion, later vacated by the Supreme Court, Judge Kilkenny stated ". . . the evidence of Mammoth's negligence is substantial, if not overwhelming . . .", 605 F.2d 438, 441 (1979).

a directed verdict should have been granted. The Ninth Circuit held that a *new trial was necessary*. That new trial was held. And the Ninth Circuit reviewed the case on an essentially identical factual record after the second trial. At that time the verdict in favor of the plaintiffs was reversed, holding that the court erred in failing to direct a verdict for the vessel owner.

The second time the Ninth Circuit reviewed this case, it ignored the Supreme Court's directive that a vessel owner may be held liable if the actions of the stevedore are so obviously improvident as to require the vessel owner to step in and correct the situation. The Ninth Circuit has given directly contradictory messages. In the first instance a new trial was called for, while in the second instance the plaintiff's claim was eliminated as a matter of law.

2. **The Ninth and Fourth Circuits are in direct conflict with regard to the circumstances under which the shipowner has a duty to intervene.**

The Ninth and Fourth Circuit Courts of Appeal are in direct conflict over the application of the guidelines set forth in *Scindia Steam Navigation Co. v. de Los Santos*, *supra*.

In the instant case, the Ninth Circuit indicated that its decision was controlled by *Bandeen v. United Carriers (Panama), Inc.*, 712 F.2d 1336 (9th Cir. 1983), and that the case at bar was factually indistinguishable from *Bandeen*. In *Bandeen*, the longshoremen were required to work inches from the deckload of logs exposing them to a sheer dropoff. The shipowner was fully aware of the danger presented and also knew that the stevedore would not correct the situation. In *Bandeen*, the Ninth Circuit Court of Appeals held as a matter of law:

> Given the evidence the strongest inference is in favor of the plaintiff, the best that can be said is the ship did not string horizontal lines between the stanchions, and did not insist that the stevedore do so. In light of the legislative history of the 1972 Amendments, we are satisfied that this ship had neither the duty to rig the lines, nor the duty to intervene in the stevedore's decision not to do so.

712 F.2d at 1340. As a matter of law, the Ninth Circuit held that this fact pattern was not so "obviously improvident" as to require the stevedore to intervene.

However, the Fourth Circuit Court of Appeals held as a matter of law in a case factually indistinguishable from *Bandeen* that the shipowner had a duty to intervene. *Woodruff v. United States of America*, 710 F.2d 128 (4th Cir. 1983). In *Woodruff*, a stevedore was employed to place a non-skid coating on the deck surface of the vessel. As in *Bandeen*, the men applying this coating were required to work inches from the edge of the deck, exposing them to a sheer dropoff. The shipowner was also fully aware of the danger presented and knew the stevedore would not correct the situation. The Fourth Circuit expressed its view of the shipowner's duty in light of the danger as follows:

> Exposing the longshoremen to the risk of a sheer drop some fifty feet onto the dock below or into the water by foregoing the available safety device without any off-setting precautions was "obviously improvident" as a matter of law. Although the navy may have preferred to rely completely on the stevedore to protect the longshoremen, "in such circumstances it had a duty to intervene" *Scindia, supra*, 451 U.S. at 176, 101 S.Ct. at 1626; *see also, Gill, supra*, 682 F.2d at 1075.

Woodruff, supra, 710 F.2d at 131.

In nearly identical fact patterns, the Courts of Appeals for the Fourth and the Ninth Circuits have thus come to opposite holdings as a matter of law on the duty of a shipowner. The Sixth Circuit Court of Appeals has considered an analagous situation where a longshoreman fell from a barge into the water. *Robertson v. JeffBoat, Inc.*, 651 F.2d 434 (6th Cir. 1981). The court ruled that the vessel should have anticipated the harm that the absence of safety measures might cause.

3. *Scindia* does not preclude the trier-of-fact from determining what is so "obviously improvident" as to require the shipowner to intervene.

Two Circuits have ruled that the circumstances under which a shipowner has a duty to intervene are determined as a matter of law rather than as an issue of fact. This is

an improper application of this Court's ruling in *Scindia*. What conditions exist which render a workplace "so obviously improvident" is a factual issue. A jury properly instructed could make that decision. In the instant case, the jury was so instructed. Judge Pregerson in the dissent in *Bandeen* put it aptly:

> Here, a reasonable jury could have found that the stevedore's conduct exposed the longshoreman to such an unreasonable risk of harm that the duty to intervene imposed on the shipowner required it to remedy the dangerous condition. As the district court noted, the record contains ample evidence from which a reasonable jury could have concluded that some of the defendants had actual knowledge that Jones Washington, in violation of Occupational Safety and Health Administration Regulations, permitted its longshoremen to load logs with stanchions that were not rigged with safety nets or lines to prevent falls overboard. This strengthens the possibility that a reasonable jury could have found Jones-Oregon's conduct "so obviously improvident" that the shipowner was dutybound to step in.
>
> Moreover, a reasonable jury could have concluded that the shipowner, by not equipping the stanchions with permanent reach wires, failed to provide a workplace in which an experienced longshoreman could, by the exercise of reasonable care, carry on his work with reasonable safety.

Bandeen v. United Carriers, *supra*, 712 F.2d at 1341.

Nothing in *Scindia* contemplates that each factual setting be evaluated by the bench, thereby removing it from the province of the jury. Nothing about the fact pattern in the instance case is beyond the comprehension of a jury.

Juries are fully capable of assessing the danger of requiring that men work 30 feet above the dock inches away from the edge on slippery logs. Juries are fully capable of deciding when a shipowner has notice that the stevedore has no intention of correcting the situation or providing any form of safety equipment. Juries are also capable of looking at the configuration of the ship and noting that its design makes it impossible for a stevedore to rig nettings or reach wires. Prior to *Bandeen*, the Ninth Circuit had repeatedly indicated that a directed verdict is not an appropriate vehicle to deter-

mine if there had been a breach of duty under *Scindia*. *Bueno v. United States*, 687 F.2d 318 (9th Cir. 1982); *SubingSubing v. Reardon Smith Line, Ltd.*, 682 F.2d 779 (9th Cir. 1982); *Davis v. Partenreederei M.S. Normannia*, 657 F.2d 1048 (9th Cir. 1981); *Turner v. Japan Lines, Ltd.*, 651 F.2d 1300 (9th Cir. 1981).

4. **The Ninth Circuit has failed to consider the active participation of the vessel in direct contradiction to *Scindia*.**

It was accepted by the court in *Scindia* that a vessel may be liable if it actively participates in the cargo operations. *Scindia*, *supra*, at 156-157. The lashing operation was carried out for the safety of the crew and the vessel at sea to insure that the load of logs on the deck did not shift or become unstable. For that reason, the ship's crew participated in the lashing operation. At the time of Mr. Bachtel's fall, the loading of logs had ceased and the lashing had begun. Members of the ship's crew actively participated and assisted Mr. Bachtel and his fellow longshoremen in the lashing operation. In addition, officers of the vessel checked and approved the lashing as it progressed. The gear used in the lashing operation was part of the vessel's equipment.

This case is analagous to *Davis v. Partenreederei M.S. Normannia*, *supra*, in which the court held that the vessel's officers had concurrent control over the operation and saw and appreciated the danger presented to the longshoremen. Therefore, the vessel could not escape liability under *Scindia*. In the instant case, the vessel's officers and crew also participated with full knowledge of the danger presented to the longshoremen.

5. **It is important that *Scindia* be uniformly and accurately applied.**

It is clear that Congress intended a major reform by the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act. It is also clear that this Court considered it important to shape the meaning and parameters of the Act by setting forth the principles in *Scindia*. If those principles are twisted or misapplied by the lower courts, the intent of this Court is frustrated. It is clear that at least two

circuits have applied the rules in *Scindia* in contradictory ways.

The question presented is also important because of the frequency with which it arises. Shipping is a huge industry in the United States. It is essential that vessel owners, stevedores and longshoremen have a set of uniformly applied standards to guide their conduct and to regulate safety. Finally, this case is important because this Court has considered it before and its directives have been ignored.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgements and to resolve the contradictory decisions of the circuit courts of appeal in their applications of the principles as set forth in *Scindia*.

Respectfully submitted this
4th day of May, 1984.

Robert D. Duggan
Marsha J. Pechman of Counsel
LEVINSON, FRIEDMAN, VHUGEN,
DUGGAN, BLAND & HOROWITZ
Attorneys for Petitioners

APPENDIX A

[FILED JUN 29 1981
RICHARD H. DEANE
CLERK U.S. COURT OF APPEALS]

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

JAMES D. BACHTEL and DONNA BACHTEL, Plaintiffs-Appellees, v. MAMMOTH BULK CARRIERS, LTD., Defendant-Appellant. TWIN HARBOR STEVEDORING CO., Intervenor.	)	NO. 77-3645
JAMES D. BACHTEL and DONNA BACHTEL, Plaintiffs-Appellants. v. MAMMOTH BULK CARRIERS, LTD., Defendant-Appellee. TWIN HARBOR STEVEDORING CO., Intervenor.	)	ORDER

Appeal from the United States District Court Western District of Washington

Before: KILKENNY and SNEED, Circuit Judges, and WATERS, District Judge.*

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* The Honorable Laughlin E. Waters, United States District Judge for the Central District of California, sitting by designation.

The Supreme Court of the United States having vacated the judgment of this court and remanded for further consideration in the light of Scindia Steam Navigation Co., Ltd. v. De Los Santos, 451 U.S. ____ (April 21, 1981), and Bloomer v. Liberty Mutual Ins. Co., 445 U.S. 74 (1980), and it being our considered conclusion that the instructions in the district court do not conform with the requirements of Scindia Steam Navigation Co., Ltd. v. De Los Santos, supra, and that a new trial is necessary.

Accordingly, it is ORDERED that the judgment of the district court be set aside and that this case be remanded to the district court for further proceedings consistent with the opinion of the Supreme Court in Scindia Steam Navigations Co., Ltd. v. De Los Santos, supra.

APPENDIX B

[A TRUE COPY
ATTEST FEB 15, 1984
PHILLIP B. WINBERRY
Clerk of Court
by: s/s
D.M. Niezen
Deputy Clerk]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES D. BACHTEL, Plaintiff-Appellee, vs.	)	JUDGMENT
MAMMOTH BULK CARRIERS, LTD., Defendant-Appellee, and	)	NO. 82-3259 DC CV 75-455
TWIN HARBOR STEVEDORING COMPANY, Intervenor.	)	JET

APPEAL from the United States District Court for the WESTERN District of WASHINGTON (Seattle)

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the WESTERN District of WASHINGTON (Seattle) and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed.

Filed and entered October 24, 1983

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES D. BACHTEL, Plaintiff/Appellee, vs. MAMMOTH BULK CARRIERS, LTD., Defendant/Appellees, and TWIN HARBOR STEVEDORING COMPANY, Intervenor.	)	NO. 82-3259 USDC NO. C75-455-MT MEMORANDUM

Argued and Submitted:*--July 7, 1983

Decided--October 24, 1983

Appeal from the United States District Court for the Western District of Washington
Hon. Jack E. Tanner, District Judge, Presiding

Before: WRIGHT, CHOY and NELSON, Circuit Judges.

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*The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21, of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

Mammoth Bulk Carriers, Ltd. (Mammoth) appeals from a judgment of liability in an action brought by James Bachtel and his wife (Bachtel) for damages for personal injury under 33 U.S.C. § 905(b) (1976). Mammoth contends that, as a matter of law, there was no evidence of its negligence and that it was therefore entitled to a directed verdict or a judgment n.o.v. We agree and reverse the judgment of liability against Mammoth.

We review the trial court's failure to direct a verdict or enter a judgment n.o.v. under the same standard the district court applied: viewing the evidence in the light most favorable to Bachtel, was there substantial evidence present that could support a finding for Bachtel. Murphy Tugboat Co. v. Crowley, 658 F.1d 1256, 1260 (9th Cir. 1981); Naton v. Bank of California, 649 F.2d 691, 697 (9th Cir. 1981).

This court has held that "[A] directed verdict is proper if the evidence permits only one reasonable conclusion." Bandeen v. United Carriers (Panama), Inc., No. 81-3641, slip op. at 3771 (9th Cir. Aug. 12, 1983) (citation omitted) (Bandeen).

This case is controlled by our decision in Bandeen. That case affirmed a trial court's directed verdict under indistinguishable factual circumstances from those presented here. The decision considered the OSHA regulation requiring the stevedore to provide safety nets. 29 C.F.R. § 1918.32(b) (1982), and concluded: "If nets or lines were needed, it was the duty of the stevedore to provide them." Slip op. at 3772. Bandeen went on to address the shipowner's duties with regard to attaching the nets or lines, and found that: "Giving the evidence the strongest inferences in favor of the plaintiff, the best that can

be said is that the ship did not string horizontal lines between the stanchions, and did not insist that the stevedore do so." Id. at 3773. We find that the evidence in this case would not warrant a similar statement with respect to lines or nets. Bandeen continues: "In light of the legislative history of the 1972 amendments, we are satisfied that the ship had neither the duty to rig the lines, nor the duty to intervene in the stevedore's decision not to do so." Id. at 3773-74.

The record in the instant case does not support any inferences more favorable to Bachtel than those reached in Bandeen. Because we review the grant and the denial of a directed verdict by the same standard, Bandeen thus requires us to find that the trial court erred in failing to direct a

verdict or enter a judgment n.o.v. for Mammoth. This is dispositive of the case, so we need not reach any other arguments made on this appeal.

REVERSED.

APPENDIX C

[FILED FEB 07 1984
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES D. BACHTEL, Plaintiff-Appellee, vs. MAMMOTH BULK CARRIERS, LTD., Defendants-Appellees, and TWIN HARBOR STEVEDORING COMPANY, Intervenor.	)	NO. 82-3259 DC# C75-455MT ORDER

Before: WRIGHT, CHOY and NELSON, Circuit Judges.

The panel as constituted in the above case unanimously voted to deny the petition for rehearing and unanimously rejects the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for a rehearing en banc, and no judges of the court has requested a vote on

the suggestion for a rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is DENIED and the suggestion for a rehearing en banc is REJECTED.